

82-1457

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ALEXANDER L. STEVAS,
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CASE NO.

in the
Supreme Court
of the
United States

October Term 1982

PARLIAMENT INSURANCE COMPANY,
Petitioner,

vs.

EDYTH LEFCOE,
Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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Filed: February 25, 1983.

QUESTION PRESENTED FOR REVIEW

In 1974, PARLIAMENT INSURANCE COMPANY entered into a fire insurance contract with MRS. LEFCOE that the company could cancel upon five days notice. The insurance policy was effective for three years, but MRS. LEFCOE elected to pay annual premiums. In 1975, MRS. LEFCOE paid no premium. The company cancelled in accordance with the conditions of the policy in June, 1975 after seeking a premium increase.

A rule promulgated by the Florida Department of Insurance in March, 1975 to meet an emergency in health care prohibited the cancellation of insurance policies for failure to pay increased premiums.

DID THE RULE AS APPLIED TO THE FIRE INSURANCE POLICY IN THIS CASE TO INVALIDATE PROPER CANCELLATION UNCONSTITUTIONALLY IMPAIR THE OBLIGATION OF THE CONTRACT?

LIST OF ALL PARTIES

Parliament Insurance Company

Mrs. Edyth Lefcoe

Kent Insurance Company, Successor to Parliament

Herbco, Inc., parent company

Marlboro Leasing, Inc., affiliated company

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**UNOFFICIAL REPORT PURSUANT TO
SUPREME COURT RULE 21.1(d)**

Parliament Insurance Co. v Lefcoe, Case No. 81-6035
(11th Cir., filed January 19, 1983).

There is no official report at the time of filing this
Petition in February, 1983.

JURISDICTIONAL STATEMENT

(i) On November 30, 1982, the United States Court of Appeals for the Eleventh Circuit affirmed the judgment entered against Parliament Insurance Company by the Federal District Court for the Southern District of Florida.

(iv) This Court's jurisdiction is based upon 28 U.S.C., Section 1254(1). The Eleventh Circuit's decision on the federal question of impairment of contract conflicts with this Court's decisions in *Allied Structural Steel Co. v Spannaus*, 438 U.S. 234 (1978), *Worthen v Thomas*, 292 U.S. 426 (1934) and *Home Building and Loan Ass'n v Blaisdell*, 290 U.S. 398 (1934). The Eleventh Circuit's decision also conflicts with decisions from the Ninth and Eighth Circuits respectively. *In re LaFortune*, 652 F.2d 842 (9th Cir. 1980); *White Motor Corp. v Malone*, 599 F.2d 283 (8th Cir. 1979), *aff'd mem.* 444 U.S. 911 (1979).

**CONSTITUTIONAL PROVISIONS AND
EMERGENCY RULE PURSUANT TO
SUPREME COURT RULE 21.1(f)**

United States Constitution, Article I, Section 10:
No state shall . . . pass any . . . Law impairing the
Obligation of Contracts. . . .

Florida Constitution, Article I, Section 10: No . . .
law impairing the obligation of contracts shall be passed.

Emergency Rule 4ER75-1 issued by the Insurance
Department of the State of Florida: No insurer may in
this state, cancel or otherwise terminate any insurance
contract or require execution of a consent to rate
endorsement during the stated policy term for the
purpose of offering to issue or issuing a similar or
identical contract to the same insured at a higher premium
rate, or continuing an existing contract at an increased
premium. Pursuant to Section 626.970, Florida Statutes,
this rule does not apply to life or disability insurance.

STATEMENT OF CASE

Jurisdiction in Federal District Court for the
Southern District of Florida was based on 28 U.S.C.,
Section 1332, diversity of citizenship (A. 2, App. 12).
MRS. LEFCOE claimed an amount in excess of \$10,000
exclusive of interest and costs (A. 2, App. 12).

On August 21, 1981, after a non-jury trial, the
district court judged PARLIAMENT INSURANCE
COMPANY liable on a fire insurance policy for half of a
\$126,250 judgment in favor of MRS. EDYTH LEFCOE

for losses stemming from a fire in April, 1976 (A. 2).¹ The insurance company had cancelled MRS. LEFCOE'S policy in accordance with the conditions of the policy on June 8, 1975 (A. 4), and MRS. LEFCOE paid no premium in 1975 (Tr. 29). However, the district court reasoned that the insurance company could not cancel the policy after unsuccessfully seeking a premium increase (A. 2), because of the following emergency rule promulgated by Florida's Insurance Department on March 14, 1975 to meet an emergency in health care:

No insurer may in this state, cancel or otherwise terminate any insurance contract or require execution of a consent to rate endorsement during the stated policy term for the purpose of offering to issue or issuing a similar or identical contract to the same insured at a higher premium rate, or continuing an existing contract at an increased premium. Pursuant to Section 626.970, Florida Statutes, this rule does not apply to life or disability insurance.

Florida Department of Insurance Emergency Rule 4ER75-1.

The insurance commissioner stated the reasons for the emergency rule:

- (1) It has come to my attention that insurers writing professional liability insurance,

¹Highlands Insurance Company, who also insured the property, was a defendant in a consolidated case in the district court and was to pay the other half of the judgment. Highlands settled with MRS. LEFCOE and is not involved in this Petition (A. 1, App. 5).

particularly medical malpractice insurance, are attempting to increase premium rates during the policy term. I am advised that at least one insurer in the state of Florida intends to accomplish such an increase in premiums by cancelling all policies issued to doctors and the Florida Hospital Association in the immediate future before a Hearing on this Emergency Rule could be conducted.

(2) This practice would result in a circumvention of statutory requirements concerning justification and approval of premium rate charges with resultant losses of participants' funds and the possible abridgment of the availability of health care services in this state and, therefore, presents an immediate danger to the general public health, interest and welfare of Florida Citizens.

The reasons for concluding that the procedure is fair under the circumstances are as follows:

(1) The immediacy of the danger to the general welfare of Florida citizens described above necessitates the implementation of this Rule at the earliest possible time.

* * *

(A. 1, App. 3-4)

Attorneys' fees of \$20,000 were assessed against the insurance company in favor of MRS. LEFCOE (A. 3).

The insurance company appealed to the United States Court of Appeals for the Eleventh Circuit, which heard oral argument on October 4, 1982 and rendered its decision on November 30, 1982, affirming the district court (A. 1). The circuit court held:

1. That the insurance company could not cancel the policy after unsuccessfully seeking a premium increase.

and

2. That there was no substantial constitutional question regarding contract impairment because the insurance company "could have cancelled its policy of insurance upon proper notice at any time."

(A. 1, App. 6-7). Such doublespeak on a federal question conflicts with this Court's decisions in *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978) and *Worthen v. Thomas*, 292 U.S. 426 (1934). It also conflicts with decisions of the Ninth and Eighth Circuits respectively, viz. *In re LaFortune*, 652 F.2d 842 (9th Cir. 1980) and *White Motor Corp. v. Malone*, 599 F.2d 283 (8th Cir. 1979), *aff'd mem.* 444 U.S. 911 (1979). Such conflict constitutes the basis for this Petition for Writ of Certiorari.

The Eleventh Circuit also ruled that Emergency Rule 4ER75-1 applied to fire insurance policies. It is not necessary for the Court to reach this question.

The Eleventh Circuit's mandate issued January 19, 1983.

On May 26, 1974, EDYTH LEFCOE entered into a three year fire insurance contract with the insurance company to cover an apartment-hotel, which she owned (A. 5). The insurance policy provided for cancellation as follows:

This policy shall be cancelled at any time at the request of the insured, . . . This policy may be cancelled at any time by this Company by giving to the insured a five days' written notice of cancellation. . . .

(A. 5, App. 20 Cancellation of policy).

MRS. LEFCOE paid one year's premium in 1974. She could have pre-paid three years' premium and her rates would not have changed during the life of the policy (Tr. 169-70). It was the custom in the industry to review premium rates every year if premiums were paid in yearly installments (Tr. 170-71).

In 1975, the insurance company reviewed MRS. LEFCOE'S apartment-hotel and determined that since the building was erected in 1920 (Tr. 116), was located in a deteriorating neighborhood and was a firetrap, that it was a substandard risk (Tr. 174, A. 6). The insurance company provided coverage for substandard risks, but it could not do so at rates published in the manual (A. 6) put out by Insurance Services Offices, a national organization (ISO Manual).

The agent from the insurance agency which sold the policies testified:

When an account appears at such a bad location, it's a bad account, which old hotels are in the downtown area. As you know, they're firetraps; and the only reason that these were written at manual rates to begin with was because of the pressure of Mr. Ackerman (owner of the agency), who had a love for the LEFCOES, and who persuaded the companies to do this, but it was against good underwriting practice.

(A. 7).

Highlands Insurance Company cancelled its policy with MRS. LEFCOE at the same time PARLIAMENT did, because "the risk failed to meet our minimum underwriting requirements" (Tr. 229) and was a substandard risk (Tr. 229-30).

MRS. LEFCOE paid no premium in 1975 (Tr. 29). Her attorney stipulated that she received the notice of cancellation (A. 4) dated June 8, 1975 (Tr. 26), but she testified that she never sought other insurance (Tr. 61).

MRS. LEFCOE testified that in May, 1975 she received a communication (A. 8) from her insurance agent regarding an increase in premiums on her substandard risk (Tr. 53-54). There was conflict between her trial testimony and her deposition testimony regarding what action, if any, she took after receiving this communication (Tr. 54, 69-71). It is uncontroverted that she never looked for other insurance after receiving the cancellation notice dated June 8, 1975 (Tr. 61).

On April 3, 1976, MRS. LEFCOE'S apartment-hotel burned down. She sued upon the cancelled insurance policies and the district court awarded her judgment in the amount of \$126,250 plus attorneys' fees and costs.

The Eleventh Circuit affirmed.

MRS. LEFCOE'S apartment-hotel had sustained previous fire damage in April, 1975 for which the insurance companies paid \$83,750 (Tr. 27).

SUMMARY OF ARGUMENT

The circuit court denied the insurance company the means of enforcing its policy by retroactively applying a 1975 emergency rule tailored to meet a health care crisis to the 1974 fire insurance policy. The contract was substantially impaired because the insurance company's cancellation in accordance with policy conditions was invalidated, and the company was held liable for a fire, which occurred during a year when no premium had been paid. Such an impairment of contract threatens the insurance company's solvency and its ability to pay benefits. No emergency in fire insurance was demonstrated to justify this substantial impairment.

This Court must grant certiorari because the Eleventh Circuit's decision on the federal question conflicts with this Court's decisions in *Allied Structural Steel* and *Worthen*. It also conflicts with decisions from other circuits, viz. *LaFortune* and *White Motor Corp.*

ARGUMENT

WHETHER THE EMERGENCY RULE TAILORED TO MEET A HEALTH CARE CRISIS UNCONSTITUTIONALLY DENIED THE INSURANCE COMPANY THE MEANS OF ENFORCING ITS FIRE INSURANCE POLICY.

The circuit court erred in retroactively applying a 1975 emergency rule tailored to meet a health care crisis to a 1974 fire insurance policy, so as to substantially impair the latter. The insurance company was held liable for a fire which occurred during a period when no premium was paid. The insurance company's cancellation in accordance with policy conditions was invalidated. No emergency in fire insurance was demonstrated to justify this substantial impairment.

The Eleventh Circuit's decision on the federal question conflicts with this Court's decisions in *Allied Structural Steel*, *Worthen*, and *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934). It also conflicts with decisions from other circuits, viz. *LaFortune* from the Ninth and *White Motor Corp.* from the Eighth.

The fire insurance policy could be cancelled by the company *for any reason* on five days' notice (A. 5). The emergency rule was tailored to meet an emergency in the availability of health care services. Applying this rule to a fire insurance contract entered into almost a year before the rule was promulgated altered substantial rights of the insurance company. *Worthen* at 432. The Eleventh Circuit denied the insurance company the means to enforce its contract. *Id.* at 433.

In *Worthen*, insurance monies were placed beyond the reach of creditors by operation of state statute. In the instant case, the insurance company was forced to provide coverage to a substandard risk at a rate which violated good underwriting practice (Tr. 174, 229; A. 7). *In fact, the insured paid no premium at all for the year in which the fire occurred and she recovered a \$126,000 judgment.* The solvency of the insurance company and its ability to pay benefits is jeopardized by this application of the emergency rule.

As in *Worthen*, the rule as applied in the instant case, "was not limited to the emergency and set up no conditions apposite" to the emergency. *Id.* at 432. There was no showing that there was an emergency in fire insurance and the rule was not limited to health care. In the instant case as in *Worthen*, there were no limitations as to time, amount, circumstances and need. *Id.* at 434. MRS. LEFCOE'S apartment-hotel had been built in 1920 (Tr. 116), it was in a deteriorating neighborhood and was a firetrap (Tr. 174). Yet, the insurance company was compelled to carry it at standard rates for a period of two years, even when no premium at all was paid, because the emergency rule was retroactively applied. *Contra, Blaisdell* where mortgage moratorium legislation was tailored to the emergency and was limited to the emergency's duration. Therefore, it was held not to be an unconstitutional impairment of mortgage contracts.

This Court must reach the same conclusion as it did in *Worthen*: The prohibition against premium increases applied to a fire insurance policy dated almost a year before the prohibition was created "constitutes an unwarrantable interference with the obligation of

contracts in violation of the constitutional provision." Id. at 431-32. *U.S. Const.*, art. I, sec. 10; *Fla. Const.*, art. I, sec. 10.

The position of the company in the instant case is similar to that of the company in *Allied Structural Steel*. In *Allied*, a state statute compelled employees' pension rights to vest at a time not provided for in the company's pension plan. The company in *Allied* had no reason to anticipate early vesting and was compelled to exceed bargained-for expectations. Id. at 246. n. 18. Moreover, an express term of the pension plan was nullified. Id. In the instant case, the insurance company had no reason to anticipate that it would be prohibited from cancelling its contract in accordance with policy conditions. The insurance company was compelled to exceed bargained-for expectations when it had to provide coverage to a substandard risk at standard rates. In fact, it was held liable when the insured had not paid her yearly premium. Thus, an express term of its policy was nullified. Just as in *Allied*, the company's obligations were changed in an area where reliance was vital, the funding of claims. Id. at 246.

As in *Allied*, there was no showing that "this severe disruption of contractual expectations was necessary to meet an important general social problem." Id. at 247. The problem was in health care not in fire insurance. Therefore, the Eleventh Circuit's decision in the instant case conflicts with *Allied* and this Court must reverse.

If the Contract Clause is to retain any meaning at all, . . . it must be understood to impose

some limits upon the power of a state to abridge existing contractual relationships, even in the exercise of its otherwise legitimate police power.

***Allied* at 242 (emphasis in the original). This is a case in which to impose such limits.**

The decision of the Eleventh Circuit also conflicts with the Ninth Circuit's decision in *LaFortune*. In *LaFortune*, a California statute automatically exempted dwellings from creditors' liens, regardless of whether Homestead had been declared. The Ninth Circuit determined that no necessity for retroactive application of the statute had been shown. In the instant case, there was not even a representation that fire insurance was unavailable. Therefore, as in *LaFortune*, it must be held that the emergency rule "cannot constitutionally be applied retroactively." *Id.* at 848. See also *White Motor Corp.* following *Allied Structural Steel*.

Application of the emergency rule substantially impaired the contractual obligations of the fire insurance policy. There was no reason to retroactively apply the emergency rule to the fire policy. Therefore, the Contracts Clause was violated and the decision of the Eleventh Circuit must be reversed.

CONCLUSION

The Court must grant certiorari in this case based on the facts and the applicable law.

Respectfully submitted,

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CASE NO.

in the
Supreme Court
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October Term 1982

PARLIAMENT INSURANCE COMPANY,
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vs.

EDYTH LEFCOE,
Respondent.

APPENDIX TO PETITION
FOR WRIT OF CERTIORARI

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 81-6035

EDYTH LEFCOE,
Plaintiff-Appellee,

versus

PARLIAMENT INSURANCE COMPANY,
A Corporation,
Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Florida

(November 30, 1982)

Before TJOFLAT, KRAVITCH and HATCHETT, Circuit
Judges.

PER CURIAM:

On May 26, 1974, Edyth Lefcoe, appellee, the owner of the Sargaosa apartment building, purchased fire insurance coverage from Parliament Insurance Company and Highlands Insurance Company. On March 14, 1975, the Insurance Department of the State of Florida issued Emergency Rule 4ER75-1 and filed with the Secretary of State a statement establishing the existence of an emergency. The rule read as follows:

No insurer may in this state, cancel or otherwise terminate any insurance contract or require execution of a consent to rate endorsement during the stated policy term for the purpose of offering to issue or issuing a similar or identical contract to the same insured at a higher premium rate, or continuing an existing contract at an increased premium. Pursuant to Section 626.970, Florida Statutes, this rule does not apply to life or disability insurance.

The statement showing why the rule was promulgated and the existing emergency stated:

Pursuant to the provisions and requirements of Section 120.54(8), Florida Statutes and Rule 4.38.21. Rules of the Department of Insurance, in justification of the adoption of Emergency Rule Number 4ER75-1, a certified copy of which accompanies this statement, to be effective upon filing with the Department of State, the undersigned Insurance Commissioner and Treasurer, as head of the Department of Insurance, hereby finds that the adoption of said rule is necessary for the immediate preservation of the public health, peace, safety or general welfare.

The facts constituting said emergency are the following:

(1) It has come to my attention that insurers writing professional liability insurance, particularly medical malpractice insurance, are

attempting to increase premium rates during the policy term. I am advised that a least one insurer in the state of Florida intends to accomplish such an increase in premiums by cancelling all policies issued to doctors and the Florida Hospital Association in the immediate future before a Hearing on this Emergency Rule could be conducted.

(2) This practice would result in a circumvention of statutory requirements concerning justification and approval of premium rate charges with resultant losses of participants' funds and the possible abridgment of the availability of health care services in this state and, therefore, presents an immediate danger to the general public health, interest and welfare of Florida Citizens.

The reasons for concluding that the procedure is fair under the circumstances are as follows:

(1) The immediacy of the danger to the general welfare of Florida citizens described above necessitates the implementation of this Rule at the earliest possible time.

(2) Notice of the effect of this Rule will immediately be mailed to all insurers doing business in Florida, to all other interested parties, and will be distributed to the news media.

On April 20, 1975, the Sargaosa Apartments were damaged by fire. Edyth Lefcoe filed claim against

Parliament Insurance Company. During litigation over the amount to be paid, the claim was settled. On April 25, 1975, Edyth Lefcoe was notified that there would be an increase in premiums. She declined to pay the increased premium which resulted in the cancellation of her policy on June 8, 1975. On April 3, 1976, another fire damaged the Sargaosa apartment building. Parliament refused to pay the claim because of its earlier cancellation of the policy.

Lefcoe brought suit in the district court to recover her loss for the destruction of the apartment building. A final judgment for Lefcoe was entered against Parliament.*

The only issue before the court is whether the Florida Department of Insurance Emergency Rule 4ER75-1 applies to the cancellation of fire insurance policies.

Parliament asserts that it was not prohibited from cancelling the policy of insurance on the apartment building because Emergency Rule 4ER75-1 was not intended to apply to fire insurance policies. Parliament relies upon the statement of justification for the issuance of the rule filed with the Secretary of State, and argues that the rule was intended to prevent the cancellation of medical malpractice and hospital liability policies. Of special significance, Parliament points out that no place in the statement of justification is there any mention of problems faced by the people of the State of Florida

*Although a judgment was also entered against Highlands Insurance Company in this joint trial, Lefcoe and Highlands settled the matter.

which could be solved by preventing cancellation of fire insurance policies. In other words, Parliament urges the court to construe the statute in light of the statement filed with the Secretary of State and all surrounding circumstances.

Lefcoe argues that the rule is definite, certain, and clear; therefore, no interpretation is necessary. Lefcoe urges the court not to resort to the rules of construction of a statute or administrative rule because such is unnecessary in this case. Lefcoe insists that we apply the literal meaning of the language of the rule.

While the language of the rule is broad, it is equally clear and unambiguous. No construction is necessary. The trial court recognized its duty to apply the literal meaning of the rule. *Alligood v. Florida Real Estate Commission*, 156 So.2d 705 (Fla. Dist. Ct. App. 1963); *State v. Egan*, 287 So.2d 1 (Fla. 1973). In addition, the Emergency Rule specifically excluded other classes of insurance, but did not exclude fire policies.

Parliament also raised a constitutional issue: Whether the Emergency Rule prohibiting cancellation of fire insurance policies, based upon increased premiums, was an unconstitutional exercise of the power of the state amounting to an impairment of contract rights in violation of the Constitution of the United States and the Constitution of the State of Florida. We agree with the trial court that no substantial constitutional question is raised because Parliament's rights to cancellation under the contract continued intact. Parliament could

have cancelled its policy of insurance upon proper notice at any time. It simply could not seek a premium increase during the prohibited period and cancel its policy for failure of the insured to pay the increased premium.

Accordingly, we affirm.

AFFIRMED.

[FILED AUG 21 1981]

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 76-982-CIV-EBD

EDYTH LEFCOE,

Plaintiff,

-vs-

**HIGHLANDS INSURANCE COMPANY, a corporation,
*Defendant.***

CASE NO. 77-1955-CIV-EBD

EDYTH LEFCOE,

Plaintiff,

-vs-

**PARLIAMENT INSURANCE COMPANY, a corporation,
*Defendant.***

THIS CAUSE came before the Court for trial; a jury trial was waived by stipulation of all parties. Having considered the evidence presented and the arguments of counsel, the Court does make and enter the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The plaintiff, EDYTH LEFCOE, owned certain improved real property in Miami, Florida, known as the Saragossa Apartment Hotel (Hotel).

2. The defendant, HIGHLANDS INSURANCE COMPANY, (Highlands), issued a fire insurance policy to the plaintiff providing coverage for the Hotel. This policy was issued on September 1, 1973 and extended for a term of three (3) years.

3. The defendant, PARLIAMENT INSURANCE COMPANY, (Parliament), issued a fire insurance policy to the plaintiff providing coverage for the Hotel. This policy was issued on May 26, 1974 and extended for a term of three (3) years.

4. Each policy provided coverage in the amount of \$105,000.00 for a total coverage of \$210,000.00.

5. The Ackerman Insurance Agency was a duly appointed agent for both defendant insurers.

6. The Hotel was damaged by a fire which occurred on April 20, 1975. As a result of this fire, the plaintiff filed claims with both Highlands and Parliament to recover for the damages sustained. Both insurers contested these claims.

7. On April 3, 1976, prior to the receipt of the payment of the settlement for the April 20, 1975 fire, and before the premises had been repaired, the Hotel was destroyed by yet another fire. The destruction to the structure caused by this fire was complete.

8. Parliament paid Edyth Lefcoe \$41,875.00 for the loss sustained in the first fire.

9. Highlands paid Edyth Lefcoe \$41,875.00 for the loss sustained in the first fire.

10. In a letter dated April 2, 1975, which was written on the stationery of the Ackerman Insurance Agency, Mrs. Lefcoe was informed by Ackerman's Vice President, T.T. Sandler, of the following:

We have currently been advised by the carriers, captioned, of the fire hazard coverage on your apartment building, that due to the age of the building and with cooking and space heaters in same that this risk does not really meet — standard manual business.

Therefore, both companies have advised us that they are not willing to continue coverage unless we increase the rates by a 25% surcharge. This will raise the annual premium from \$794.00 to approximately \$923.00 annually on each policy.

Should this meet with your approval, sign and return the enclosed forms where indicated. Please keep in mind that failure to accept the increase will most likely result in cancellation of these policies and that we have no other outlet with which to replace coverage at standard rates on a building of this age.

This letter was referenced: Saragossa Apts., Parliament #AF25012 and Highlands #F765602. These policy numbers

correspond to the fire insurance policies issued by the respective carriers for coverage on the Hotel.

11. The plaintiff refused to pay the increase in premiums as demanded by the defendant insurers.

12. Notice of cancellation by both Parliament and Highlands was received by the plaintiff at least ten (10) days prior to June 8, 1975, the effective date of the cancellations. These written notices of cancellation conformed to the manner prescribed in the insurance contracts.

13. On March 14, 1975, the Insurance Commissioner of the State of Florida issued Emergency Rule 4ER75-1 which provides as follows:

No insurer may in this state, cancel or otherwise terminate any insurance contract or require execution of a consent to rate endorsement during the stated policy term for the purpose of offering to issue or issuing a similar or identical contract to the same insured at a higher premium rate, or continuing an existing contract at an increased premium. Pursuant to Section 626.970, Florida Statutes, this rule does not apply to life or disability insurance.

This rule had an effective operation period of ninety days.

14. State of Florida, Department of Insurance Emergency Rule Number 4ER75-1 was in effect during the time the increased premiums were demanded as well as when the notices of cancellation were issued.

15. Both Highlands and Parliament issued cancellation notices because of the failure of the plaintiff to pay the additional premiums as demanded.

16. During the period of time between the first fire and the second fire, the plaintiff took measures to preserve the damaged structure from further destruction due to vandalism and the elements and to prevent it from becoming a hazard to trespassers and passers-by.

17. Although the premises were uninhibited for over sixty successive days immediately prior to the second fire in the sense that no living being was living there, the property was looked after by a watchman and a guard dog which had been retained by the plaintiff.

CONCLUSIONS OF LAW

1. Jurisdiction is based upon diversity of citizenship pursuant to 28 U.S.C. §1332(a). The matter in controversy has a value in excess of \$10,000.00 exclusive of interest and costs.

2. As this Court has previously ruled when presented with the issues on the defendant's motion for summary judgment, Emergency Rule 4ER75-1 is a proper exercise of the regulatory powers of the Florida Department of Insurance, it does not offend either the Constitution of the United States or the State of Florida, and its operation is applicable to fire insurance policies.

3. Both Highlands and Parliament had the right, at their election, under the terms of the insurance contract, to simply cancel their insurance coverage during the life of the policy.

4. Emergency Rule 4ER75-1 did not deprive them of this right. The Rule was merely an attempt to prevent a policy cancellation where such a cancellation was based upon a demand for increased premiums within the coverage period.

5. The attempt by the defendant insurers to exact additional premiums based upon threats of cancellation was a violation of Emergency Rule 4ER75-1.

6. Because the defendant insurers based their cancellations of plaintiff's insurance coverage upon her refusal to agree to their demands for increased premiums an otherwise proper cancellation becomes improper.

7. Since the operation of Emergency Rule 4ER75-1 renders the attempted cancellations ineffective and because the terms of the insurance contracts had not otherwise expired, both policies were in full force and effect in April, 1976, the time of the second fire.

8. In a situation where premises are damaged by fire rendering it uninhabitable and where the premises are again the subject of yet another fire before it can be made habitable, assuming no fault or lack of diligence on the part of the insured, the vacancy or unoccupancy clause of the insurance contract has not been breached. It would be unreasonable and self contradicting to provide that a building must be occupied during a period when the parties knew, as they did here, that it could not be occupied. *American Central Insurance Co. of St. Louis v. McHose*, 66 F.2d 749 (3rd Cir. 1933).

9. Where an insured building is completely destroyed by fire, the amount recoverable is governed by the valued policy law and depreciation is not to be applied against the cost of repair to determine the amount recoverable. *Sperling v Liberty Mutual Insurance Co.*, 281 So.2d 297 (Fla. 1973).

10. The valued policy statute of Florida, FLA. STAT. §627.702, is applicable to the situation presented here.

11. "When there are several permissible concurrent policies of fire insurance and there is a total destruction by fire of the insured premises, the aggregate amount of the insurance written, or the sum of the face amounts in the policies for this peril, is conclusive as to the true amount of the loss and measure of damages when so destroyed." *Springfield Fire and Marine Insurance Co. v. Boswell*, 167 So.2d 780 (Fla. DCA 1st 1964).

12. Proof of loss statements have been waived by the defendant's denial of liability. *Guarantee Mutual Fire Insurance Co., v. Jacobs*, 57 So.2d 845, 848 (Fla. 1952).

13. The plaintiff is entitled to recover as damages for the loss of improvements under the terms of the policies the sum of \$126,250.00. This figure is calculated by subtracting the amount paid after the first fire (\$83,750.00) from the total value of both policies (\$210,00.00).

Based upon the foregoing Findings of Fact and Conclusions of Law, it is hereby

ORDERED and ADJUDGED that judgment is hereby entered in favor of the plaintiff, **EDYTH LEFCOE** and against the defendants, **HIGHLANDS INSURANCE COMPANY** and **PARLIAMENT INSURANCE COMPANY**, in the amount of \$126,250.00, this award to be paid in equal shares by each defendant. It is further

ORDERED and ADJUDGED that the plaintiff, **EDYTH LEFCOE**, shall recover reasonable attorney's fees together with the costs of this action.

DONE and ORDERED this 21st day of August, 1981.

/s/ Edward B. Davis

**UNITED STATES DISTRICT
COURT JUDGE**

Copies Furnished to:

**John W. Prunty, Esq.
Pyszka, Kessler
Jesse W. Miller, Esq.**

[FILED OCT 21 1981]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 77-1955-Civ-EBD

EDYTH LEFCOE,

Plaintiff,

vs.

PARLIAMENT INSURANCE COMPANY, a corporation,
Defendant.

ORDER ON ATTORNEY'S FEES

THIS CAUSE came before the Court on Motion of counsel for EDYTH LEFCOE for an award of attorney's fees and the Court having reviewed the file and being otherwise fully informed in the matter hereby determines that the sum of TWENTY THOUSAND DOLLARS (\$20,000.00) is a reasonable fee to be allowed Plaintiff's attorneys in this cause;

It is, therefore, ORDERED that the Plaintiff, EDYTH LEFCOE, do have and recover Judgment in the sum of TWENTY THOUSAND DOLLARS (\$20,000.00) from Defendant, PARLIAMENT INSURANCE COMPANY, as attorney's fees payable to the attorneys for the Plaintiff, Prunty, Ross, Olsen & Israel.

**DONE and ORDERED at Miami, Dade County,
Florida, this 22d day of October, 1981.**

/s/ Edward B. Davis

**JUDGE, UNITED STATES
DISTRICT COURT**

**Conformed copies furnished to:
Prunty, Ross, Olsen & Israel
Jesse W. Miller, Esq.
Pyszka & Kessler, P.A.**

Post Office Department
RECEIVED FROM:



ONE PIECE OF ORDINARY MAIL ADDRESSED

TO: _____

THIS RECEIPT DOES NOT PROVIDE FOR INDEMNIFICATION
POSTMASTER.

INSURED

POLICY NUMBER

ISSUED AT

AT 22012
New York, New York
A RUPP, 1 story, 23 unit apartment Bldg.
at 1110 1st St., New York, N.Y.

CANCELLATION TO TAKE EFFECT (X ONE)

☐ AT NOON
☒ 12:01 A.M. STANDARD TIME

MO. DAY YEAR

YOU ARE HEREBY NOTIFIED THAT THE ABOVE POLICY IS HEREBY CANCELLED IN ACCORDANCE WITH THE CONDITIONS OF THE POLICY. SAID CANCELLATION TO BE EFFECTIVE ON AND AFTER THE HOUR AND DATE MENTIONED ABOVE.

THE EXCESS PAID PREMIUM ABOVE THE PRO-RATA PREMIUM FOR THE EXPIRED TERM (IF NOT TENDERED) WILL BE REFUNDED UPON DEMAND.

CANCELLED
Pro-Rata 765.00 Short Rate Flat
DATE 6-8-25
REASON Company request
SENT TO COMPANY 6-6-25

MORTGAGEE
OR
LIEN HOLDER

CERTIFICATION

I HEREBY CERTIFY THAT I PERSONALLY MAILED IN THE U. S. POST OFFICE AT THE PLACE AND TIME STAMPED HEREON, A NOTICE OF CANCELLATION, AN EXACT LAMIN COPY OF WHICH APPEARS ABOVE, AND AT SAID TIME RECEIVED FROM THE U. S. POST OFFICE THE RECEIPT (FORM 3817), HERETO ATTACHED.

SIGNED THIS 27 DAY OF July 1925
SIGNATURE Carol Long

COMPANY'S COPY OF INSURED'S NOTICE



Parliament
CHICAGO, ILLINOIS



INSURANCE COMPANY
A STOCK COMPANY, HEREIN CALLED THE COMPANY

No. AF 25012

DECLARATIONS

Name of Insured *Lyth Lafcoe*
Sarasota Apartments
221 N. 3rd Street
Miami, FL

Address *221 N. 3rd Street*
Miami, FL

Policy Period From *5-26-74* to *5-26-77* **3 Years**

Agency *Ackerman Insurance Agency, Inc.*
19 W. Flagler St., #624
Miami, FL 33130



AGENCY, INC.
TEL. 371-2611
19 W. FLAGLER STREET
MIAMI, FLORIDA 33130

insuring the same property real estate value if they do not, they should be made conform to ones

INSURANCE IS PROVIDED AGAINST ONLY THOSE PERILS AND FOR ONLY THOSE COVERAGES INDICATED BELOW BY A PREMIUM CHARGE AND AGAINST OTHER PERILS AND FOR OTHER COVERAGES ONLY WHEN ENDORSED HEREON OR ADDED HERETO.

AMOUNT	RATE	PREMIUM IF PAID IN FULL AT RECEIPT	PREMIUM IF PAID IN INSTALLMENTS	PERIL(S) Insured Against and Coverage Provided (Insert Name of Endor)
1 105,000	1.132	1	1 139.00	FIRE AND LIGHTNING
1 655.00	.624	1	1 655.00	EXTENDED COVERAGE
		1	1	Incl. VULN
		1	1	
		TOTALS 1	1 794.00	1 794.00
1 2382.00		TOTAL PREMIUM FOR POLICY ON INSTALLMENT BASIS		
		POLICY FEE		
		TAX		
		TOTAL		

Item No.	Amount Pay or Pay and Extended Coverage or Other Part	Per Cent of Ex Insurance "Apportion"	DESCRIPTION AND LOCATION OF PROPERTY COVERED
1 1	105,000	80%	On the three story, 23 units, masonry, composition roof apartment building (known as Sarasota Apts) situated: 221 n/s N 3rd Street, Miami, Dade, Florida

Subject to Form 1001, attached hereto, 10/16/70, 9-6-3(12/70)

(Insert Form Number(s) and Edition Date(s))

Mortgage Clause: Subject to the provisions of the mortgage clause attached hereto, less, if any, on building terms, shall be payable to

(Insert Name of Mortgagee and Mailing Address)

Counter-signature Date *6-11-74* Agency at *Miami, FL* *Ackerman Insurance Agency, Inc.*
Counter-signed by *Leo Ackerman* Agent

IN CONSIDERATION OF THE PROVISIONS AND stipulations herein or added hereto AND OF the premium above specified, this Company, for the term of years specified above from inception date shown above at Noon (Standard Time) to expiration date shown above at Noon (Standard Time) at location of property insured, to be consumed and extending the amount(s) above specified does hereby insure the insured named above and legal representatives, to the extent of the actual cash value of the property at the time of loss, but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair or reconstruction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or expansion of loss, nor in any event for more than the interest of the insured against any DIRECT LOSS BY FIRE, LIGHTNING AND BY RAINFALL FROM PREMISES INSURED BY THE PERILS ENDORSED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described herein while located or contained as described in this policy or on file for not more than 90 days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, or extended in this policy.



Parliament
CHICAGO, ILLINOIS



INSURANCE COMPANY
A STOCK COMPANY, HEREIN CALLED THE COMPANY



WINDHURST EARTHEN PAINT AND WATERPROOFING
EXCLUSION CLAUSE

No. 908.3
File No. 50
October 1970

It is hereby stipulated that any loss under this policy does not include damage caused or any amount by vandalism to paint or waterproofing material applied to the exterior of the building or structure(s) covered by contract. The value of paint or waterproofing material, being excluded from the coverage as above stated, shall not be considered in the determination of actual cash value when applying the 50% coinsurance formula applicable to loss from vandalism.

None to Agents. The "vandalism" portion may be torn off if the clause is attached when the policy is written.

Attached to and forming part of Policy No. _____ of the

_____ name of insurance company _____

issued at 03 _____ Agency _____

dated _____ Agent _____

No. 908-3 (10-70) (File No. 50)

No. 908-3 (10-70) (File No. 50)

Options to Purchase Common:

1. Existing Coverage: When the insurance under this policy covers a HILL INHABITANT occupied as described on the first page of this policy, such insurance shall include insurance of permanent features, while contained therein, of attached structures.

3. Furniture, Equipment and Supplies Coverage.—When the insurance under this policy covers FURNITURE, EQUIPMENT and SUPPLIES it shall include all such items not covered under Paragraph 1 pertaining to the occupancy described. On the first page of this policy and only while contained therein, except as otherwise indicated. Also, at the option of the Insured, coverage hereunder shall include personal effects of the Insured while contained in the described building and not otherwise covered. Motor vehicles, boats and aircraft are not covered hereunder.

This statement of coverage shall not apply to property in transit nor to property on any premises owned, leased, operated or controlled by the insured. (It) not apply except as stated and the amount due from any other insurance covering the property, whether collectible or not, and (2) no loss more directly or indirectly to the benefit of any carrier or other bailee.

4. **Co-Insurance**—It is a part of the conditions of this policy; and the basis upon which the rate of premium is fixed, that the Insured shall at all times maintain insurance on each item of property covered by this policy of not less than the percentage specified on the first page of this policy, of the actual cash value thereof, and that, failing so to do, the Insured shall be an insurer to the extent of such deficit, and in that event shall bear his/her share of the proportion of any loss.

Co-Insurance Contract—The rate charged in this policy is based upon use of a Co-Insurance clause attached hereto with the contract of the insured.

3. **Foundation Exclusion (Applicable to Building Coverage only)**—It is stipulated that brick, stone or concrete foundation, masonry or other structures which are below the under surface of the lowest floor of basement (or basements), or where there is

The foundations and cost of excavations above described being exempted from the application of the Co-Insurance Clause of this policy, and not being covered by this insurance, it is expressly stipulated that in the event of loss, if the insurance company should elect to rebuild, and it should be found necessary on account of statutory or other cause to replace said foundations and basins and excavations, in whole or in part, the cost of doing so shall be at the expense of the Insured.

7. **Minimum Retained Premium**—If this policy is cancelled at the request of the Insured, the premium retained by the Company shall be not less than the minimum provided in the above rate rules.

9. **Electrical Apparatus**—This Company shall not be liable for any loss resulting from any electrical injury or disturbance to electrical appliances, devices, fixtures or wiring caused by electrical currents incidentally generated unless fire causes, or contributes to, the damage. The Company shall not be liable for any loss or damage of loss caused by lightning.

11. **Operation of Building Laws**—This Company shall not be liable for loss occasioned directly or indirectly by enforcement of any local or state ordinance or law regulating the construction, repair or condition of building(s) or structure(s), unless such building or structure is specifically named in an enforcement action.

Failure to comply with the above provisions shall exempt the merchant in respect to the location where the branch enters for the duration of the branch.

It is further covenanted and agreed that the mortgagor (or trustor) shall notify this Company of any change of ownership or occupancy or increase of hazard, which shall come to the knowledge of said mortgage (or trustee) and, unless permitted by this policy, it shall be deemed thereon, and the mortgage (or trustee) shall, on demand, pay the premium for such increased hazard for the term of the policy thereon. Otherwise, this policy shall be null and void.

Whenever this Company shall pay the mortgages (or trustee) any sum for loss under this policy and shall claim that, as the mortgagor or owner, no liability therefore existed, this Company shall, at the cost of such payment, be thereupon legally

14. **Nuclear Claims**—The word "fire" in this policy or endorsements attached hereto is not intended to and does not embrace fire or explosion or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and loss by such

THE PROVISIONS PRINTED ON THE REVERSE SIDE OF THIS FORM ARE HEREBY REFERRED TO AND HOLD A PART HEREOF.

A. 5. App. 22

1. The undersigned hereby certifies that the above information is true and correct to the best of his knowledge and belief, and that he is not aware of any information that would cause the above information to be false or misleading.

PARLIAMENT

TO: Ted Sandler - Ackerman **Subject:** Edyth Lofcoe
AF 25012

FROM: Rick Odess

Date April 25, 1975

19

The above captioned policy comes up for anniversary on 5-26-75. As you know, this risk had a fire loss on 4-20-75. We will be checking with our claim department as to the extent of the loss and when it can be repaired. However, upon anniversary, we will have to have a 25% surcharge. I feel that this is really not manual business due to the fact that this is a 50 year old building; with cooking in the apartments, space heaters, and a deteriorating area. Please call or write with your advices.

07

[15]

Q You did?

A I did because of the instructions from the office. I had rather lose a customer than a company.

Q When you refer to instructions from the office, what office do you mean?

A The office that said to get the 38-F signed regarding the twenty-five percent increase in the premium or that they would have to get off.

Q You are talking about the office of the carrier, now, Southern Underwriters, who directed you to do that?

A Well, they never directed us. They don't have to direct us. We're underwriters in our office. *When an account appears at such a bad location, it's a bad account, which old hotels are in the downtown area. As you know, they're firetraps; and the only reason that these were written at manual rates to begin with was because of the pressure of Mr. Ackerman, (owner of the agency) who had a love for the Lefcoes, and who persuaded the companies to do this, but it was against good underwriting practice.*

Q It was your decision, then, to issue the cancellation notice at that time?

A Because if I didn't, they would have gotten a direct order from the Company. The company

ACKERMAN INSURANCE AGENCY, INC.

Suite 624 Biscayne Building

39 West Flagler Street

MIAMI, FLORIDA 33130

Telephone: 371-2611

TO Edyth Lefcoe

ATTENTION

STREET 2120 S.W. 21st Street

CITY Miami, FL 33145 STATE

SUBJECT Saragossa Apts

Parliament #AF 25012 & Highlands #F 765602

REPLY ATT'N OF

DATE 5-2-75

Dear Mrs. Lefcoe:

We have currently been advised by the carriers, captioned, of the fire hazard coverage on your apartment building, that due to the age of the building and with cooking and space heaters in same that this risk does not really meet — standard manual business.

Therefore, both Companies have advised us that they are not willing to continue coverage unless we increase the rates by a 25% surcharge. This will raise the annual premium from \$794.00 to approximately \$923.00 annually on each policy.

Should this meet with your approval, sign and return the enclosed forms where indicated. Please keep

in mind that failure to accept the increase will most likely result in cancellation of these policies and that we have no other outlet with which to replace coverage at standard rates on a building of this age.

Yours truly,

/s/ T. T. Sandler

T. T. SANDLER,
Vice Pres.

CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Petition for Writ of Certiorari and Appendix were deposited in a United States mailbox first-class postage prepaid, addressed to John W. Prunty, Attorney for Respondent, Edyth Lefcoe, 837 City National Bank Building, Miami, Florida, 33130 in compliance with Rule 28.3 of the Supreme Court Rules on February 25, 1983.

**KATHLEEN V. McCARTHY,
ESQ.**

Attorney for Petitioner
**PARLIAMENT INSURANCE
CO.**

**18191 NW 68th Avenue
Hialeah, Florida 33015
(305) 556-1770**